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COOPERATION BETWEEN THE UNITED NATIONS AND THE ASIAN-AFRICAN LEGAL CONSULTATIVE COMMITTEE

Report of the Secretary-General

1. The present report is prepared pursuant to paragraph 5 of General Assembly resolution 45/4 of 16 October 1990, entitled "Cooperation between the United Nations and the Asian-African Legal Consultative Committee".

2. The General Assembly, by resolution 35/2 of 13 October 1980, accorded permanent observer status to the Asian-African Legal Consultative Committee (AALCC) and invited the Committee to participate in its sessions and work in the capacity of observer. A Permanent Observer Mission to the United Nations was soon thereafter established in New York. On the occasion of the commemoration of the Committee's twenty-fifth anniversary, the Assembly, in its resolution 36/38 of 18 November 1981, requested the Secretary-General of the United Nations to carry out consultations with the Secretary-General of AALCC with a view to strengthening further and widening the scope of cooperation between the two organizations in the field of progressive development and codification of international law and other areas of common interest; and decided to include in the provisional agenda of its thirty-seventh session an item entitled "Cooperation between the United Nations and the Asian-African Legal Consultative Committee". In its resolution 39/47 of 10 December 1984, the Assembly commended AALCC for orienting its programme to strengthen its supportive role to the work of the United Nations in wider areas.

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3. In May 1987, following a series of consultations and meetings between the two Secretariats, a programme of cooperation was drawn up which identified nine specific areas, namely: cooperative framework; representation at meetings and conferences; Sixth Committee matters; law of the sea matters; question of refugees; efforts towards strengthening the role of the United Nations; illicit traffic in narcotic drugs; international economic cooperation for development; and zones of peace and international cooperation.

4. In its resolution 45/4, the General Assembly noted the continuing efforts of AALCC towards strengthening the role of the United Nations and its various organs, including the International Court of Justice, through programmes and initiatives undertaken by the Committee; the commendable progress achieved towards enhancing cooperation between the United Nations and AALCC in wider areas; and the decision of AALCC to participate actively in the programmes of the United Nations Decade of International Law.

A. Cooperative framework

5. Pursuant to the cooperative framework agreed in 1987, consultations have been routinely conducted on matters of common interest between the secretariat of AALCC and the competent offices and organs of the United Nations, in particular, regarding representation at meetings and sessions, exchange of documentation and information, and the identification of areas where the supportive role of AALCC might be most productive. In light of these consultations, AALCC has tried to orient its work programmes to accord priority to matters that are of current interest to the United Nations and to initiate actions with a view to strengthening the role of the United Nations. The areas of cooperation now cover matters in the economic and humanitarian fields in addition to progressive development and codification of international law.

B. Representation at meetings and conferences

6. During the period under review, the Asian-African Legal Consultative Committee was represented at various meetings and conferences held under the auspices of the United Nations and its organs and agencies, including the regular sessions of the General Assembly, the International Law Commission, the United Nations Commission on International Trade Law (UNCITRAL), the Preparatory Commission for the International Sea-Bed Authority and for the International Tribunal for the Law of the Sea, the Preparatory Committee for the United Nations Conference on Environment and Development, the Meeting of Senior Environmental Law Experts on the Progress made on the 1981 Montevideo Programme and Preparation for the Second Meeting on Development and Periodic Review of Environmental Law held at Geneva in July 1991, the International Working Group on the Creation of an Effective International Crime and Justice Programme held at Vienna in August 1991 and the United Nations Conference on Environment and Development (UNCED).

7. With a view to assisting its Member States in preparing for UNCED, the secretariat of the Committee has been represented at most of the meetings of the Preparatory Committee for UNCED; the Intergovernmental Negotiating Committee on the Framework Convention on Climate Change as well as the Intergovernmental Negotiating Committee on a Convention on Biological Diversity. AALCC circulated a statement of General Principles of International Environmental Law in the form of a working document (A/CONF.151/PC/WG.III/5) at the final session of the Preparatory Committee for UNCED held in New York in 1992.

8. The thirty-first session of AALCC, which was held at Islamabad, Pakistan, in 1992, was attended, inter alia, by the Registrar of the International Court of Justice, the Chairman of the International Law Commission, the Director of the Codification Division of the Office of Legal Affairs (on behalf of the Legal Counsel) and officials representing the United Nations and the Office of the United Nations High Commissioner for Refugees (UNHCR).

C. Role of the United Nations and the United Nations Decade of International Law

9. As a part of its contribution to the commemoration of the fortieth anniversary of the United Nations, the secretariat of AALCC prepared a study on "Strengthening the role of the United Nations through rationalization of functional modalities with special reference to the General Assembly" (A/40/726 and Corr.1, annex). The study provided an overall assessment of the functioning of the United Nations, focusing on certain specific matters and issues. Subsequently, AALCC prepared a set of recommendations on the improvement of the functioning of the General Assembly (see A/41/437, annex). AALCC continues to follow up the implementation of the relevant resolutions relating to this subject as well as the progress on various other related proposals.

10. Pursuant to General Assembly resolution 44/23 of 17 November 1989, in which the Assembly, inter alia, declared the period 1990-1999 as the United Nations Decade of International Law, the secretariat of AALCC prepared a paper identifying a number of issues involved and of activities that may be taken during the Decade. At its twenty-ninth session held in Beijing in March 1990, AALCC, while endorsing the secretariat's proposals, urged greater collaboration with the United Nations in this regard. A report on the role that AALCC can play in the realization of the objectives of the Decade was submitted to the Secretary-General under that topic (see A/45/430, annex; see also para. 13 below).

D. Promoting wider use of the International Court of Justice

11. At the fortieth session of the General Assembly, a study by AALCC on the question of possible wider use of the International Court of Justice by a compromis when the parties so agree, was submitted and circulated to Member

States (see A/40/682, annex). The study focused attention on the advantages to be obtained by using the Court or its Special Chamber in preference to using ad hoc arbitral tribunals. A colloquium on the role of the Court in disputes referred to it by Member States by means of special agreement was subsequently held at United Nations Headquarters to provide opportunities for in-depth explanation of the available procedures under the Rules of Court for resolving disputes in matters referred under special agreements, with special reference to hearing of cases by a chamber of the Court at the request of the parties.

12. A meeting of the Legal Advisers of the member States of AALCC, convened at United Nations Headquarters in New York in November 1991, inter alia, considered the issue of peaceful settlement of disputes. In addressing the meeting, the President of the International Court of Justice, Sir Robert Jennings, said that he had found renewed support for the Court in the General Assembly; he also emphasized, inter alia, the importance of the advisory opinions of the Court as an instrument of preventive diplomacy.

13. Recently, the secretariat of AALCC has undertaken preparation of a study on the enhanced utilization of the International Court of Justice in matters relating to the protection and preservation of the environment. A memorandum outlining the basic approach of the study was submitted to the Registrar of the International Court of Justice. In this context, it should be noted that the General Assembly, in its resolution 44/23 entitled "United Nations Decade of International Law", recognizes that one of the main objectives of the Decade is to promote means and methods for the peaceful settlement of disputes between States, including resort to and full respect for the International Court of Justice.

E. Measures designed to further the work of the Sixth Committee

14. Pursuant to its programme of rendering assistance to its member States for active participation in the work of the General Assembly, AALCC has, since 1982, prepared notes and comments on items before the Sixth Committee, including the report of the International Law Commission. In addition, consultations have been arranged from time to time during the General Assembly between the representatives of member States of AALCC and other interested Governments to provide opportunities for an exchange of views on those matters. An informal consultation of the Legal Advisers of AALCC member States is planned for the latter half of October to consider those matters.

15. AALCC continues to maintain its links with the International Law Commission and has included in its current work programme the question of non-navigational uses of international watercourses - a subject under consideration by the Commission. At its thirty-first session, the Committee, inter alia, requested the International Law Commission to take up as a priority item the subject "Legal aspects of the protection of the environment of areas not subject to national jurisdiction (global commons)".

16. Collaboration has also continued between AALCC and UNCITRAL. The secretariat of AALCC was represented at the UNCITRAL Congress on Uniform Commercial Law in the Twenty-first Century, held in New York in May 1992, in conjunction with the twenty-fifth session of UNCITRAL. The secretariat is now in the process of preparing notes and comments on the items discussed in the course of the aforementioned Congress for the use of its member States when those items are to be discussed at the next session of UNCITRAL.

F. Measures for the promotion of ratification and implementation of the United Nations Convention on the Law of the Sea

17. AALCC has considered the question of encouraging and facilitating the ratification of the United Nations Convention on the Law of the Sea, and has urged its member States signatories to the Convention to ratify it in order to allow its early implementation. AALCC has also made an appeal to all other States to consider ratifying or acceding to the Convention at the earliest possible date. At its Cairo (thirtieth) session in 1991, AALCC considered a note prepared by its secretariat on the significance and cost of ratification of the Law of the Sea Convention. Subsequently, AALCC also discussed matters relating to the Preparatory Committee for the International Sea-Bed Authority and for the International Tribunal for the Law of the Sea. At its thirty-first session, AALCC urged the International Law Commission to consider including in its work programme an item entitled "Reservation for peaceful purposes of the international sea-bed area and the high seas for marine scientific research".

G. International economic cooperation for development

18. Since the eleventh special session of the General Assembly, held in 1980, AALCC has concentrated on the question of international economic cooperation for development and, to this end, it has participated in the sessions and meetings of the Economic and Social Council, UNCTAD and UNCITRAL. Various suggestions have been put forward for consideration by its members. AALCC has also prepared model bilateral agreements for promotion and protection of investments, so as to generate a wider flow of capital and technology to the developing countries in the Asian-African region. Steps are now being taken to promote wider appreciation of the models among the Governments of the Asian-African region.

19. AALCC is in the process of preparing a legal framework for industrial joint ventures. It has begun the compilation of relevant information with the intention to prepare a legal guide on joint ventures similar to the one prepared by UNCITRAL on drawing up of international contracts for industrial works.

20. Under an AALCC scheme for settlement of disputes in economic and commercial transactions, three regional arbitration centres have been established at Kuala Lumpur, Cairo and Lagos. One of the objectives of these

centres is to help in the promotion and implementation of the UNCITRAL arbitration rules. Negotiations concerning the establishment of another similar regional arbitration centre at Tehran, intended primarily for oil arbitration, are at an advanced stage.

21. In response to a request, the secretariat of AALCC prepared a feasibility study on establishing a centre for research and development of legal regimes applicable to the economic activities in developing countries. The secretariat of AALCC prepared further a study on how to strengthen its capabilities to collect and disseminate information and data from various United Nations agencies and other bodies. A Data Collection Unit has been established recently at its headquarters at New Delhi to acquire expertise in collecting and analysing the necessary data and to develop the requisite expertise. The Unit has reportedly acquired the requisite hardware and is in the process of preparing the necessary software; it has requested the member States of the Committee as well as the relevant international organizations to make available to the Unit the requisite data in this regard.

22. An item on the debt burden of developing countries has been on the agenda of the Committee since its Kathmandu (twenty-fourth) session in 1985. The subject was also considered by an Expert Group Meeting held at New Delhi in November 1986. The secretariat prepared several studies on the subject which were considered by successive sessions. A paper entitled "Legal aspects of international loan agreements" was circulated at its Singapore (twenty-seventh) session in 1988. The current phase of work on the subject includes inter alia a study of the legal aspects of loan rescheduling. At its twenty-ninth session, the secretariat of AALCC was requested to continue monitoring developments in this field and to formulate a set of legal principles and guidelines on that subject. The Committee could not, however, consider the item at its recent session, largely owing to lack of time.

H. Question of refugees

23. In cooperation with UNHCR, AALCC has, since 1964, been actively engaged in the study of refugee law and refugee problems. Its work on these subjects led to the adoption of its Bangkok Principles in 1966 and an addendum thereto in 1970. This pattern of cooperation was reactivated following the adoption by the General Assembly of its resolution 36/38 and the AALCC decision at its Tokyo (twenty-second) session in 1983. The deliberations at that session paved the way for closer cooperation between AALCC and UNHCR. At its Kathmandu (twenty-fourth) and Arusha (twenty-fifth) sessions in 1985 and 1986, respectively, AALCC gave detailed consideration to the "principle of burden-sharing", and a consensus was reached at the twenty-fifth session that the concept of burden-sharing had become through the practice of States, "a principle of humanitarian refugee law".

24. At its Bangkok (twenty-sixth) session in 1987, AALCC adopted another addendum to its Bangkok Principles of 1966, which elaborated the concept of burden-sharing. AALCC also examined the question of State responsibility in

regard to refugees. At its twenty-fifth session, the secretariat of AALCC was asked to examine the concept of a safety zone for the displaced person in the country of origin. During its twenty-sixth and twenty-seventh sessions, AALCC held discussions on this matter, centring on the legal status of such a safety zone and the circumstances under which a safety zone could be established in the country of origin of refugees or displaced persons. Currently, the secretariat of AALCC is re-examining the definition of the term "refugee" and is preparing a compendium of legal principles and case law on various issues relating to refugees. At the twenty-ninth session, the secretariat was mandated to prepare a study on the right and duties of refugees as well as on the obligation of States towards refugees.

25. In 1991, AALCC organized jointly with UNHCR a two-day workshop at New Delhi on "International Refugee and Humanitarian Law in the Asian-African Region". The objective of the workshop was to enhance the awareness of government authorities of member and non-member States of the region of the comprehensive character of the international instruments concerning refugees and, in particular, to promote the ratification of or accession to the 1951 Convention and the 1967 Protocol relating to the Status of Refugees among AALCC member States. The workshop, inter alia, recommended that the secretariat of AALCC should consider the possibility of preparing a draft model legislation relating to refugees. Such a draft model legislation is being prepared by the secretariat of AALCC to help its member States in formulating their national legislation on the subject and in implementing the 1951 Convention and the 1967 Protocol and other relevant regional instruments on refugees.

I. Zones of peace and international cooperation

26. At its twenty-fourth session, AALCC considered the concept and legal framework of a zone of peace in the context of a reference made by a member State and a preliminary study on the concept prepared by the secretariat. The matter was further discussed at the twenty-fifth session and it was decided that an expert group would consider the contents and implications of various proposals on the establishment of peace zones made within and outside the United Nations. Thereafter, a study on the Indian Ocean as a zone of peace was considered at the twenty-ninth session. The secretariat of AALCC was requested to establish close cooperation in this regard with the United Nations Ad Hoc Committee on the Indian Ocean.

27. AALCC has included in its work programme a topic entitled "Elements of a legal instrument on friendly and good-neighbourly relations of States in Asia and the Pacific". At the twenty-sixth session, it was decided to widen the scope of the topic to include the African region as well and to appoint the delegate of Mongolia as the Rapporteur. At the twenty-seventh session, the discussion centred on the Rapporteur's report. The Rapporteur prepared a further report for the twenty-ninth session, examining the relevance of certain principles such as the principle of sovereign equality of States; the non-use of force or threat of force; peaceful settlement of disputes; respect

for territorial integrity and inviolability of frontiers; the principle of promotion of collective security and disarmament; and State responsibility. This topic is on the agenda of the Committee's forthcoming session scheduled to be held at Kampala in February 1993.

J. Illicit traffic in narcotic drugs

28. Pursuant to a decision taken at the twenty-fourth session, the secretariat of AALCC prepared a study entitled "International control of narcotic drugs and psychotropic substances: efforts within the United Nations". This study was submitted to the General Assembly on the occasion of the fortieth anniversary of the United Nations.

K. Other issues currently before AALCC

29. At its twenty-seventh session, AALCC included an item on its agenda entitled "Criteria for the distinction between terrorism and the people's struggle for liberation". The subject was discussed at the twenty-eighth and twenty-ninth sessions of the Committee. The secretariat was asked to work in close coordination with the Sixth Committee of the United Nations where a similar item has been under consideration.

30. At its twenty-seventh session, AALCC included an item in its agenda entitled "Deportation of Palestinians as a violation of international law, particularly the 1949 Geneva Conventions". At its twenty-eighth session, AALCC considered the customary and codified law relating to occupied territories, and briefly discussed the duties of occupying power. The Committee then directed its secretariat to undertake a comprehensive study on the subject, including the question of payment of compensation to Palestinians. The study prepared by the secretariat was considered by AALCC at its twenty-ninth session, which directed the secretariat to prepare a further study taking into account all legal aspects of the matter, including the issues of resettlement in violation of international law by Israel of a large number of Jews from the former Soviet Union into Palestine. Thereafter, the matter was also considered at its thirtieth and thirty-first sessions.

31. At its twenty-ninth session, the Committee directed the secretariat to undertake a study on cooperation between the Asian-African countries to ban the dumping of toxic and other wastes into their countries and to cooperate in the formulation of regional or subregional conventions banning the dumping of toxic and other wastes. AALCC and the United Nations Environment Programme (UNEP) are planning to organize a joint meeting on the topic during 1992.